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IN THE MATTER OF THE APPLICATION OF SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC., FOR A HEARING TO DETERMINE THE FAIR VALUE OF ITS PROPERTY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RETURN THEREON, TO APPROVE RATES DESIGNED TO DEVELOP SUCH RETURN AND FOR RELATED APPROVALS.

Docket No. E-01575A-08-0328

IN THE MATTER OF THE APPLICATION OF SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC., FOR AN ORDER INSTITUTING A MORATORIUM ON THE NEW CONNECTIONS TO THE V-7 FEEDER LINE SERVING THE AREAS OF WHETSTONE, RAIN VALLEY, ELGIN, CANELO, SONOITA, AND PATAGONIA, ARIZONA.

Docket No. E-01575A-09-0453

10 June 2010

NOTICE AND FILING

RESPONSE TO A RECOMMENDED OPINION AND ORDER (ROO) AND AN EXCEPTION

The Recommended Opinion and Order of 28 May 2010 is for the Sulphur Springs Valley Electric Cooperative (SSVEC) Petition of 14 January 2010 to Amend Decision No. 71274 pursuant to A.R.S. §40-252. This filing responses and includes one Exception for consideration.

One matter in this Petition concerns constructing a 69 kV line by SSVEC to Sonoita or other options, including local renewable energy, to resolve distribution issues. This "expedited" petition requested all the 69 kV line requirements from Decision No. 71274 for public hearings or forums be waived and allow the line's immediate construction. This petition lacks veracity with misleading statements from the Commission-mandated *Feasibility Study* concern urgency and reliability and has interfered with the planned re-hearing schedule for the past six months.

An intervenor in this case, Ms. Sue Downing, asked I be a witness. I had filed a initial letter of concern to the Commission on 27 January. My Direct Testimony on 16 March 2010 addressed the lack of 'immediate' urgency and reliability needs cited in the Petition, showed that electricity demands could be met by means other than the 69 kV line, and the performance requirements could be met based on actions from the *Feasibility Study*. My Testimony addressed only the

1 concerns of the Petition, as subsequent procedural events are to address all of the options for a
2 solution. It included some of the petitioner' misleading claims.

3 During 24-26 March 2010 evidentiary hearings, the first two and a half days were taken up
4 mostly by the cooperative with two busloads of the "public", including employees on company-
5 time. Many Public Comments were based on erroneous or misleading information (a.k.a.,
6 propaganda) repeated over and over again, simulating truth.

7 The three intervenors and witnesses made their oral testimonies later on the third day.

8 I was the last to testify for the Intervenors. I was sworn-in about 5:10PM, late Friday
9 afternoon. Every cooperative witness had responded to many cross-examination questions
10 concerning the Magruder Testimony. In order to respond to these and erroneous public
11 comments, when I started my oral testimony, I said it might take us until midnight to respond to
12 most of the points made by the public and cooperative's witnesses. I was so rushed in my oral
13 testimony, my planned written comments were laid aside and I "testified" from memory instead
14 of going through item-by-item and completed cross-examination in about 45 minutes. The Staff
15 then testified and ALJ gave the briefing requirements. We adjourned about 6:10PM.

16 These briefing requirements were for each party to provide their closing arguments and
17 positions with conclusions and recommendations, which I called a testimony summary. Since I
18 was not an intervenor, but a witness, I filed a "Testimony Summary with Responses to Oral
19 Testimonies and Public Comments" on 15 April 2010, to meet the ALJ's requirements and
20 respond to the cooperative's witness and public comments with respect to my testimony. This
21 "response" was what I would have said on the stand if only there had been more time.

22 The cooperative filed an "Objection and Motion to Strike Late-Filed Intervenor Witness
23 Testimony." Unfortunately, this was erroneous characterization of my filing on 15 April 2010.
24 The "testimony summary" is a 1 page Summary of Conclusions and Recommendations (Section
25 1) and Closing Arguments and Position (Section 2) in compliance with the ALJ's instructions.

26 "Late filed testimony" is improper as is the cooperative's use of a "supplemental testimony."
27 My Testimony of 16 March 2010 outlined my supplemental testimony. As explained in the pre-
28 hearing procedural conference, that "supplemental" testimony would be filed only if the §40-
29 252 Petition was approved. **There was no late-filed testimony nor supplemental testimony.**

30 As explained in the referenced response,

"I was placed on the witness stand after 5 PM on Friday. We were all tired. I started with 'I
might need to be here until midnight' to orally rebut prior witnesses and Public
Comments. My responses need a fair and reasonable hearing. As a witness, I could not

1 object when asked to "summarize" my testimony as I was just getting started to respond
2 to many Public Comments and oral testimonies by the Cooperative and Commission
3 Staff. **This is that response.**" [Pp. 1-2, emphasis added]

4 That response was to the cooperative witnesses' oral testimonies, the Commission's oral
5 testimony and various cross-examinations in Sections 3 to 6, and responses to the Public
6 Comments in Section 7. Very minor, if any, "new" information was in the 15 April 2010 filing.
7 The response of what I would have said on the stand if time permitted, to the dozens of direct
8 references to my pre-filed testimony, applicant's cross-examinations, that needed clarification.

9 Further, this was not a "surrebuttal" testimony related to pre-filed testimonies, but to the
10 two plus days of public comments, oral testimonies and cross-examinations by the applicant. My
11 pre-filed testimony was a majority of the cooperative's questions to his witnesses, all to
12 discredit my testimony. In all fairness, I needed time to respond and that time just was not
13 available.

14 Therefore, as attached in EXCEPTION 1, it is request that Finding of Fact 52 be re-written to
15 correct the company-oriented misleading statements found in the ROO.

16 This Summary Testimony and Responses also has a strong statement that the *Feasibility*
17 *Study* was based on alternatives available for "next" winter (starting in **2010**) and the statement
18 by the company's attorney that late in **2011** was the earliest that the 69 kV line be operational.
19 The transcript (p. 258) shows all the "build" renewable energy alternatives were based on
20 different time criteria than by the company. Thus, the *Feasibility Study* **excluded all renewable**
21 **energy alternatives; in my view, by this significant one-year difference.** This appears to be
22 why the Company wants to "strike" this document because it significantly impacts "**timeliness**"
23 found in Facts Numbered 86, 89, 91 through 94, 102, and 108; and indirectly in Facts Numbered
24 76, 78, 82, 84, 85, 88, 101, 109, and 110.

25 I certify this filing has been mailed or delivered to parties on the Service List this date.

26 Respectfully submitted on this 10th day of June 2010.

27 MARSHALL MAGRUDER

28 By 

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MAGRUDER EXCEPTION 1

Due to misleading statements from the petitioner that were used by the ALJ and for clarity, it is requested that Finding of Fact 52 be replaced with the following:

"52. The exhibits attached to the Intervenor's Brief were submitted after the close of the evidentiary record. Due process requires that parties have an opportunity to cross examine witness and explore the foundation of documents in this Brief. It would be a violation of due process to allow exhibit from Intervenor's to be considered for the truth of the statements contained therein. However, we will allow them as an indication of the Intervenor's continuing activities to explore alternatives. Mr. Magruder's Summary Testimony was not the "supplemental" testimony referred to by the Company's as he stated in his Testimony and oral testimony that he would submit additional supplemental testimony if the Petition was not approved and that such supplemental testimony would be in compliance with the Procedural Order of February 11, 2010. Mr. Magruder's Summary Testimony contained his conclusions and recommendation, arguments and positions as requested by the ALJ during the evidentiary hearings. He also was very limited in time for his oral testimony, and thus his written responses were the only way he could respond to the oral comments in the evidentiary hearings. It is noted that the Company has not filed any reply to this response but only a procedural motion to strike. Many of these responses add clarity to the proceedings and thus we will allow to give him due process to respond and if the cooperative considers it needs due process, a replay can be added to the record."